Supreme Court, U.S.
FILED

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No.

In The

Supreme Court of the United States

AUBREY WHELCHEL,

Petitioner,

vs.

CITY OF COVINGTON, GEORGIA,
CITY COUNSEL OF COVINGTON,
JIM BERRY,
JOHN M. OTT, in his official capacity,
SUPERIOR COURT OF NEWTON COUNTY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE ELEVENTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Aubrey Whelchel
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QUESTIONS PRESENTED

1. Whether the Rooker-Feldman Doctrine is applicable to the facts of the case and issues raised and controlling.

2. Whether inverse condemnation statutes are applicable statutory alternative avenues for relief which invalidates a party's statutory rights to relief under Title 42 U.S.C., § 1983, against individual actors.

3. Whether the Rooker-Feldman Doctrine invalidates relief under the rights granted by Pulliam v. Allen.

LIST OF INTERESTED PARTIES

Pursuant to Rule 14.1(b) of the Supreme Court Rules, Aubrey Whelchel, hereby identifies those persons, associations of persons, or other entities that are, or may be interested in the outcome of this case.

Parties to this Petition:

Aubrey Whelchel	Plaintiff/Petitioner
City of Covington,	Defendant/Respondent
City Council of Covington	Defendant/Respondent
John M. Ott, Superior Court Judge	Defendant/Respondent
Superior Court of Newton County	Defendant/Respondent
Jim Berry	Defendant/Respondent

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To the Supreme Court of the United States:

Comes now Aubrey Whelchel, the Petitioner in this case, and files this Petition for Writ of Certiorari.

OPINION BELOW

The United States District Court for the Northern District of Georgia rendered a decision for the Respondents (Appendix A)

The decision rendered by the Eleventh Circuit Court of Appeals affirming the judgment of the district court (Appendix B).

The decision rendered by the Eleventh Circuit Court of Appeals denying Petitioner's request for review and reconsideration and en banc determination (Appendix C).

STATEMENT OF JURISDICTION

The judgement of the Eleventh Circuit Court of Appeals was entered on September 21, 1999. Whelchel sought a timely rehearing of the decision by the panel and sough an en banc determination which was denied on October 29, 1999.

Jurisdiction of this Court is founded on 28 U.S.C. § 1257. Under Rule 10 of the Supreme Court Rules, this Court should grant this Petition. The decision of the Eleventh Circuit Court decided legal issues and questions which laterally impact upon the rights of individuals to utilize the judicial system to gain judicial review of determinations and this Court should specifically determine when a judicial appeal should stop state officials from acting while an appeal is pending.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment I, United States Constitution —

> Congress shall make no law respecting an establishment of religion, or prohibit the free exercise thereof; or

abridging the freedom of speech, or of the press, or the right of the people to peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment IV, United States Constitution —

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V, United States Constitution —

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV, Section 1, United States Constitution —

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. Course of Proceedings & Disposition of the Case Below

Aubrey Whelchel filed a civil rights suit against the City of Covington, City Counsel of Covington, Jim Berry and John M. Ott, Superior Court of Newton County, Georgia, claiming that they had deprived him of his constitutional and due process rights, by entering his property while there was an appeal pending and destroyed the two houses laterally related to the legal proceedings. That the Superior Court of Newton County, by private request to Jude Ott, dismissed Whelchel's appeal without notification or other due process.

On June 3, 1998, Petitioner Aubrey filed a civil rights suit pursuant to Title 42, U.S.C., § 1983, and sought injunctive relief pursuant to **Pulliam v Allen**, 466 U.S. 522 (1984), against Judge Ott, to ensure that he ceased such future acts and actions as taken by him in dismissing the appeal without notification or other due process requirements. On June 15, 1998, Respondent John M. Ott tendered a motion to dismiss. On June 25, 1998, Respondent City of Covington, Jim Berry tendered a motion to dismiss. Respondent Ott, claimed that judicial immunity entitled him to dismissal. Respondents City of Covington and Berry advanced that the Petitioner has an alternative avenue of relief via an inverse condemnation proceedings to recover against the parties for the destruction of the two houses in question.

On October 20, 1998, the district court entered an order dismissing Petitioner's complaint based upon the theory of inverse condemnation rights to seek redress. On November 18, 1998, Petitioner tendered a motion for review and consideration and tendered a Notice to Appeal the Eleventh Circuit Court of Appeals. On December 21, 1998, the district court denied Petitioner's motion for review and reconsideration.

Petitioner appealed to the Eleventh Circuit Court of Appeals, who ruled that Petitioner's claims were barred pursuant to the Rooker-Feldman Doctrine and affirmed the judgment of the district court. Petitioner sought review and reconsideration and an en banc determination which was denied.

B. Statement of Facts

Petitioner is a resident of the City of Covington and owns certain property within the corporate limits of said city. Petitioner's property in question is adjacent to certain property owned by the City of Covington. Petitioner had a residential house on each of the properties in question. The City of Covington Building and Zoning Department inspected the Plaintiff's houses on or about August 31, 1992, and determined that they were in violation of applicable building codes.

Upon receipt of such notification and after consulting with the Building and Zoning Department and thereinafter Appellant obtained a building permit and commenced making repairs and renovations to the two houses on the properties in question. Appellant being advanced in age and limited as to the time and energy to make said repairs soon fell behind in the expectations of the Appellees' desires concerning the property in question. The next round appeared on the table on April 1, 1993, with the tendering of a thirty (30) day notice of extension to complete the repairs and renovations to the houses in question.

On April 8, 1996, and April 11, 1996, Respondent Jim Berry of the Coving Building and Zoning Department brought quazi-criminal charges against Petitioner under the City of Covington's Code of Ordinances concerning the two houses in question in the Municipal Court of the City of Covington, before the Honorable Jerry O. Capes, Judge.

Petitioner and the applicable parties appeared before Judge Capes on April 22, 1996, and argued about the Petitioner's alleged code violations concerning the two houses in contention. Judge Capes ordered the Petitioner to appear before the Court again on May 22, 1996, with "a plan for abatement of the nuisance as set forth in the original complaint. Petitioner appeared before the Municipal Court of the City of Covington, Judge Capes on May 22, 1996, and Judge Capes was still dissatisfied with the Appellant's progress concerning the two houses in question, and referred the matter to the Mayor and Council for the City of Covington to take into consideration the

matters concerning the Plaintiff's two houses.

On June 3, 1996, Petitioner appeared before the Mayor and City Council for the City of Covington and argued Petitioner's case concerning the judgment by Judge Capes and argued that Petitioner should be given additional time concerning the two houses and that the inspection by Respondent Berry was inaccurate and untrue. The Mayor and City Council entered the following into minutes of the hearing in question: "Judge Capes will amend his order to include his findings after considering all the evidence, including but not limited to testimony of the Building Inspector, Jim Berry, and the Defendant, Aubry Whelchel, and personal observations by the court, and documenting evidence that relates to the subject two (2) houses. Based on the findings of the court, it is the opinion of the court that the cost of repair, alteration and/or improvements need in order to meet the minimum requirements of the Code of Ordinances of the City of Covington of the two structures will exceed one-half of the value of the two houses when repaired to satisfy the minimum requirements of the Code of Ordinances of the City of Covington."

Thus, the Mayor and the City Council of the City of Covington, ordered Judge Capes of the Municipal Court of the City of Covington to "amend" his previous order and enter the judgment of the Mayor and City Council of the City of Covington statements into his order.

Judge Capes "amended" his order and entered the same on June 4, 1996, the day after the Mayor and City Council directed him to amend his order.

On July 3, 1996, Petitioner tendered a hand-written "Appeal from the city of Covington City of Covington Municipal Court" to the Superior Court of Newton County and was assigned Case No. 96-001219-2.

The Respondents, notwithstanding Petitioner's filing of the aforementioned appeal to the Superior Court of Newton County, and while Petitioner was appealing the aforementioned judicial decisions to the Superior, did in August of 1996, tore down both houses,

notwithstanding the filing of the Plaintiff's appeal from the judgment of the City of Covington and the City Council for the City of Covington which occurred on June 3 & 4, 1996. On February 27, 1997, the City of Covington filed a Notice of Lien against Petitioner's property in the amount of Four Thousand Nine Hundred ($4,900.00) Dollars for the destruction of the Petitioner's houses by the Respondents in August of 1996.

The Honorable John M. Ott, Superior Court Judge of Newton County by secret and mutual meeting and agreement with the City Attorney of the City of Covington, on July 21, 1997, without notice, pleadings or a hearing entered an order dismissing Petitioner's appeal, approximately eleven (11) months after the houses in question were torn down. Judge Ott granted an alleged motion by the City of Covington to dismiss the Plaintiff's appeal. However there was no record of the filing of the alleged motion either in the file or the Clerk's docketing sheet. Appellant filed the above-styled cause of action against the Appellees to recover for their illegal acts and actions and violations of Appellant's civil rights, pursuant to Title 42, United States Code, Section 1983.

ARGUMENT AND AUTHORITIES

Question No. 1:

Whether the Rooker-Feldman Doctrine is applicable to the facts of the case and issues raised and controlling

Petitioner's complaint addressed the fact that the City of Covington and Jim Berry, came onto the Petitioner's property while the Petitioner's appeal was pending and destroyed both houses. Petitioner seeks a decision by the Honorable Court whether the acts and actions of the Respondents in entering and destroying Petitioner's two houses are of such a nature which constitutes an invalidation of the Petitioner's federal civil rights claims pursuant to the Rooker-

Feldman Doctrine. [1]

The issue of the Rooker-Feldman Doctrine was never raised by the Respondents in the district court. Nor did the district court render its judgment of dismissal based upon the Rooker-Feldman Doctrine.

Petitioner respectfully avers that the decision by the Eleventh Circuit that Rooker-Feldman was controlling is wrong. Petitioner's appeal in the state courts was not of such a nature that allowed the Appellant to file amendments and counterclaims raising issues which were not germane to the legal issues for which the Petitioner appealed. In other words, the Petitioner's appeal was not strictly civil in nature but a quasi-criminal proceedings. See **Horne v. City of Cordele**, 254 Ga. 346, 347 (1985)(A party cannot argue on appeal the merits of issues excluded from consideration on the trial of the case); **Hawkins v. Richardson-Merrell, Inc.**, 147 Ga. App. 481, 484 (2) (249 S.E.2d 286) (1978).

Petitioner would respectfully aver that the decision by the Eleven Circuit Court of Appeals is in conflict with its previous decisions. **Wood v. Orange County**, 715 F.2d 1543, 1547 (11th Cir. 1983)

Petitioner did not have the right to raise or prosecute the Respondent's destruction of the houses in question in the appeal pending before the Superior Court of Newton County.

The Rooker-Feldman doctrine provides that the lower federal courts lack subject matter jurisdiction over a case if the exercise of jurisdiction over that case would result in the ***reversal or modification of a state court judgment***. Such jurisdiction is lacking because within the federal system, only the Supreme Court may review a state court judgment.

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1. **District of Columbia Court of Appeals v. Feldman**, 103 S.Ct. 1303, 1317 (1983); **Rooker v. Fidelity Trust Co.**, 44 S.Ct. 149, 150 (1923).

The first case to identify this principle was **Rooker v. Fidelity Trust Co.**, 263 U.S. 413, 44 S.Ct. 149 (1923). There, the plaintiff sought a declaration from the federal district court that a judgment of the Indiana state court was null and void because it violated the Contracts Clause. Id. at 414-15, 44 S. Ct. at 150. Interestingly, the plaintiff had petitioned the Supreme Court for direct review and been denied, so that the suit represented an end run around direct review. Id. at 414, 44 S. Ct. at 150. In holding that the district court lacked jurisdiction over the case, the Supreme Court stated that "[u]nder the legislation of Congress, no court of the United States other than this court could entertain a proceeding to reverse or modify the judgment for errors of that character." Id. at 416, 44 S.Ct. at 150.

Sixty years passed before the Supreme Court revisited **Rooker**, and when it did, it was concerned with the deference owed to the local courts of the District of Columbia rather than a state. In **District of Columbia Court of Appeals v. Feldman**, 460 U.S. 462, 103 S.Ct. 1303 (1983), plaintiffs brought separate actions challenging the validity of a rule of the District of Columbia that prevented them from sitting for the District's bar exam. Feldman decided that whether a federal challenge is foreclosed depends in part on whether the state proceedings were "judicial in nature." Id. at 476, 103 S.Ct. at 1311. The Supreme Court drew a distinction – potentially critical in the present case – between a challenge to the rule governing bar admission and a challenge to a judgment of a state court applying that rule. Because promulgation of a rule is a non-judicial act, a federal court would have jurisdiction over a general challenge to state bar rules. Id. at 485-86, 103 S.Ct. at 1316-17. By the same token, a federal court would lack jurisdiction over challenges to state court decisions in particular cases arising out of judicial proceedings, even if those challenges allege that the state court's action is unconstitutional. Id. at 486, 103 S. Ct. at 1317. The Feldman Court further noted that a federal court lacks jurisdiction over any claims that are "inextricably intertwined" with a state court's determinations in a judicial proceeding. Id. at 482 n. 16, 103 S.Ct. at 1315 n. 16.

It should be noted that the Superior Court of Newton County never held a hearing or made any legal determinations of the merits or the issues whatsoever, the only thing that the Superior Court did in

relationship to Petitioner's appeal was dismiss the same after holding a secret meeting with the attorney for the City of Covington and thereafter falsely claimed a motion to dismiss ***was filed*** and dismissed Petitioner's appeal.

Likewise, it should be noted that the Respondent, nor the district court raised or held that the Petitioner's civil rights case was foreclosed by application of the Rooker-Feldman Doctrine. The Rooker-Feldman Doctrine appeared sua sponte by the panel of the Eleventh Circuit Court of Appeals which advanced, in affirming the district court's judgment that the Rooker-Feldman Doctrine was applicable.

A. The Destruction of the Petitioner's Houses

It is Petitioner's contention that the destruction of the Petitioner's two houses, while Petitioner was appealing the case was not intertwined with pending state court proceedings sufficiently to foreclose Petitioner's federal civil right's claims under the Rooker-Feldman Doctrine.

The decision by the City of Covington, via the Municipal Court of Covington did not address or authorize the destruction of the Petitioner's two houses. The decision by the City of Covington, via the Municipal Court of Covington merely address various alleged code violations concerning the two houses. A party charged with quasi-criminal proceedings do not have the right to litigate civil rights violations or raise civil claims or counterclaims in those types of proceedings. Likewise, a party cannot raise or litigate issues upon the appellate plateau which were not raised in the lower court. See **Green v. State**, 230 Ga. 756 (1973); **Long v. Dalton**, 228 Ga. 539 (1972); **Long County Bd. Of Ed. v. Owen**, 150 Ga. App. 245 (1979); **Johnson v. State**, 142 Ga. App. 526 (1972).

While Petitioner was upon the appeal plateau from the determinations by the City Counsel of the City of Covington, via the Municipal Court, the Respondents authorized and dispatched forces which bulldozed the Petitioner's two houses at issue.

The destruction of Petitioner's houses was in no way part of the appeal proceedings pending before the Superior Court and Petitioner had no valid or effective legal manner to raise the same to the Superior Court since the proceedings were quasi-criminal.

A. The Legal Judgment

Petitioner respectfully advances and avers that the there was no legal judgment by the Superior Court relating to the destruction of Petitioner's two houses which would invoke the Rooker-Feldman Doctrine.

The appeal pending before the Superior Court dealt exclusively with alleged housing code violations. Likewise, there was no legal issue dealing with the Respondent's right or otherwise authorizing the destruction of the Petitioner's two houses.

Petitioner would respectfully advance that the Eleventh Circuit Court's determination of a Rooker-Feldman doctrine limitation was misplaced and inapplicable to the facts of the case. This position is in line with previous decision by the Eleventh Circuit.

The Eleventh Circuit in **Powell v. Powell**, 80 F.3d 464 (11th Cir. 1996), ruled that granting Mr. Powell relief would "effectively nullify" the state court's judgment and therefore holding that because district court holding would "effectively reverse the state court judgment," the federal claim was "inextricably intertwined" with the state court judgment and the result would be that the state court's judgment would be collaterally reviewed and reversed in federal court, which is precisely what the Rooker-Feldman doctrine exists to prevent. See **Liedel v. Juvenile Court of Madison County**, 891 F.2d 1542, 1545 (11th Cir. 1990); see also **Stern v. Nix**, 840 F.2d 208, 211-12 (3rd Cir.), cert. denied, 488 U.S. 826, 109 S.Ct. 77, 102 L.Ed.2d 53 (1988).

Petitioner further contends that the Rooker-Feldman doctrine does not apply because Petitioner, did not and could not,

based upon the fact that the pending appeal was quasi-criminal, raise or litigate the destruction of the Petitioner's two house under and pursuant to the "reasonable opportunity" to bring such a claim in the state court proceeding. Petitioner further asserts such opportunity was lacking because: (1) the destruction of the houses were not pursuant to the proceedings in the Superior Court and (2) because the proceedings were quasi-criminal and there is no present legal grounds to raise, claim or otherwise have the Superior Court address the destruction of Petitioner's houses by the Respondents with any basis for relief by the Superior Court which could be granted. Petitioner asserts that the destruction of the Petitioner's two houses effectively mooted the Petitioner's appeal. The present laws of the State of Georgia do not provide or allow a quasi-criminal proceedings to invoke civil counterclaims much less allows such quasi-criminal defendant to raise seek damages against those who are prosecuting the case for the state and seek monetary damages or other types of monetary relief. Having addressed the erroneous legal grounds upon which the Eleventh Circuit ruled upon Petitioner's case Petitioner next turns to the grounds which were utilized by the district court for denying the Petitioner relief.

Question No. 2:

Whether Georgia's inverse condemnation statutes are applicable statutory avenues for relief which invalidates Petitioner's statutory rights to relief under Title 42 U.S.C., § 1983

The district court entered judgment for the Respondents based upon the fact that the Petitioner has an alternative state remedy for the violation of the constitutional violations by the Respondents. This was based upon the defensive position, as advanced by Respondents, that the Petitioner could invoke inverse condemnation proceedings to

recover for the destruction of the Petitioner's houses. [2]

A. The Alternative Avenues for Relief

The Respondents advanced this defensive position and the district court adopted this position and ruled in favor of the Respondents. Petitioner responded that Georgia's inverse condemnation statutes as written and codified were not intended or legislatively passed for the purposes for which the Respondents invoked the same as a defensive position.

The State of Georgia's inverse condemnation statutes are codified at O.C.G.A., § 22-4-1 et seq. The purpose of Georgia's inverse condemnation statutes are clearly set forth pursuant to O.C.G.A., § 22-4-2, Legislative findings and declaration of necessity, which states:

> The General Assembly finds and declares that the prompt and equitable relocation and reestablishment of persons, businesses, farmers, and nonprofit organizations displaced when the state, any of its agencies or institutions (other than the Department of Transportation), or any county, municipal corporation, school district, political subdivision, public authority, public corporation, or public instrumentality (collectively referred to in this chapter as "several public entities") created under the Constitution and the laws of the State of Georgia acquires land with federal financial assistance, for a public use, is necessary to insure that certain individuals do not suffer disproportionate injuries as a

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2. The Eleventh Circuit Court of Appeals totally ignored this issue and affirmed the district court's judgment pursuant to the Rooker-Feldman doctrine which was never raised by the Respondents before the district court nor did the district court ever entertain a Rooker-Feldman doctrine issue or claim whatsoever.

> result of programs designed for the benefit of the public as a whole. The General Assembly finds and declares that the establishment of the uniform fair land acquisition policies will be beneficial to the public. The General Assembly finds that the Congress of the United States has, by enacting the Uniform Relocation Assistance and Real property Acquisition Policies Act of 1970, Public Law 91-646, Ninety-first Congress, approved January 2, 1971, made funds available for relocation assistance and the implementation of certain land acquisition policies. The General Assembly further finds that the Congress of the United States has by the aforesaid statute provided for the total cessation after July 1, 1972, of federal financial assistance for public works projects which will displace persons or business unless the state complies with the requirements of Public Law 91-646. The General Assembly finds and declares that the ***construction of public works*** projects with federal financial assistance is vital to the state and is in the best interest of the people of the state and that providing for the continuation of federal financial assistance at the highest possible level for ***public works projects*** is a legitimate public purpose. The General Assembly further finds that the cost of providing the assistance and services provided for in this chapter should be, and the same are declared to be, part of the necessary cost of federal-aid public works projects. O.C.G.A., § 22-4-2. (Emphasis added).

Thus, the Respondents anchored their defense against Petitioner's Civil Rights Complaint to the aforementioned inverse condemnation statutes and the district court adopted the same and dismissed Petitioner's Complaint.

The Supreme Court has repeatedly through out the years found that when there is a controversy about a statute or statutes that one should turn to the legislative intent which was utilized in passing and enacting the statute or statutes in question. **Gebser v. Lago Vista**

Independent School District, 524 U.S. 274 (1998); **Lewis v. United States**, 523 U.S. 155 (1998); **Abrams v. Johnson**, 521 U.S. 74 (1997).

The plain and simple application of Georgia's inverse condemnation statutes and rights are explicitly tied to "public works projects" and not to the acts and actions of the Respondents. When the Respondents dispatched bull dozers to the Petitioner's property and destroyed the two houses in question it was not in relationship to any federal related public works project. Thus, the Respondents could not legitimately advance to the district court that the destruction of the two houses was pursuant to any federal-aid public works project. See O.C.G.A., § 22-4-8. Therefore, the Respondents' defensive position that the Petitioner had legal relief under Georgia's inverse condemnation statutes is legally misapplied and the district court should have found that the inverse condemnation statutes for the State of Georgia were not enacted and passed for the purposes which the Respondents and the district court held them to be. Furthermore, at no time did the Respondents comply with any of the provisions of Georgia's inverse condemnation provisions as required. See O.C.G.A., § 22-4-9. The Respondents advancement of Georgia's inverse condemnation statutes is nothing short of a legal Trojan Horse concept designed to mislead the district court to conclude the since the Respondents have appeared and presented a legal Trojan Horse that the Petitioner should seek no further relief against the Respondents nor is the Petitioner entitled to anything other than the acceptance of the Respondents' pro-offered Trojan Horse.

Likewise, under Georgia's inverse condemnation statutes, there is no entitlement to punitive damages or individual liability whatsoever. **Dekalb County v. Orwig**, 196 Ga. App. 255, 257 (1990); **Fulton County v. Baranan**, 240 Ga. 837 (242 S.E.2d 617); **Wilmoth v. Henry County**, 251 Ga. 643 (309 S.E.2d 126).

B. Whether the Respondents' Acts Were Random

While the district court granted judgment to the Respondents under the legal theory that Petitioner had the right to recover against the Respondents under Georgia's inverse condemnation statutes,

Petitioner advanced that the Respondents' acts and actions did not fall within the exception which allowed the Respondents to invoke the legal right to alternative avenues of relief pursuant to Georgia's inverse condemnation statutes.

While the lower court held that Appellant's Complain must be dismissed based upon the legal theory that the inverse condemnation statues for the State of Georgia provides Petitioner with adequate post-deprivation relief nullifies Petitioner's Civil Rights claims against the Respondents.

This legal theory is supported by recognized law as rendered by the United States Supreme Court in **Zinermon v. Burch**, 494 U.S. 113, 123, 125, 110 S.Ct. 975, 982, 983, 108 L.Ed.2d 100 (1990). Where an adequate state law remedy is provided to vindicate federal due process rights, there can be no denial of procedural due process, and thus no constitutional violation.

It is Petitioner's position that the **acts and actions of the Respondents were not random and unauthorized, but intentional, deliberate and wilful**. The Respondents knew, when they dispatched bull dozers to Petitioner's properties and thereinafter bull dozed Petitioner's two houses, that the Petitioner had filed an appeal and that the appeal was pending when they illegally entered Appellant's property and destroyed the houses in question. Hence the damage inflicted by state officers avoids the conclusion that there has been any constitutional deprivation of property without due process of law within the meaning of the Fourteenth Amendment." (quoting **Bonner v. Coughlin**, 517 F.2d 1311, 1319 (7th Cir. 1975)).

While the Supreme Court has observed, "The state can no more anticipate and control in advance the ***random and unauthorized intentional conduct of its employees*** than it can anticipate similar negligent conduct." **Hudson v. Palmer**, 468 U.S. 517, 533, 104 S.Ct. 3194, 3203, 82 L.Ed.2d 393 (1984).

"[I]n any § 1983 action the initial inquiry must focus on whether the two essential elements to a § 1983 action are present: (1) whether the conduct complained of was committed by a person acting

under color of state law; and (2) whether this conduct deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States." **Parratt v. Taylor**, 451 U.S. 527, 535, 101 S.Ct. 1908, 1913, 68 L.Ed.2d 420 (1981) (overruled in part not relevant here, by **Daniels v. Williams**, 474 U.S. 327, 330-331, 106 S.Ct. 662, 664-665, 88 L.Ed.2d 662 (1986)).

In applying the **Mathews v. Eldridge** balancing analysis, the Supreme Court has generally held that the Due Process Clause requires some kind of a hearing before the state may deprive a person of liberty or property. See **Cleveland Board of Education v. Loudermill**, 470 U.S. 532, 542, 105 S.Ct. 1487, 1493, 84 L.Ed.2d 494 (1985) ("'[T]he root requirement' is 'that an individual be given an opportunity for a hearing before he is deprived of any significant protected interest'"; hearing required before termination of employment (emphasis in original)); **Memphis Light, Gas & Water Div. v. Craft**, 436 U.S. 1, 18, 98 S.Ct. 1554, 1565, 56 L.Ed.2d 30 (1978) (hearing required before cutting off utility service); **Fuentes v. Shevin**, 407 U.S. 67, 80-84, 92 S.Ct. 1983, 1994-1996, 32 L.Ed.2d 556 (1972) (hearing required before issuance of writ allowing repossession of property).

There is no question that Petitioner was initially accorded a hearing by the Respondents in a judicial forum. Likewise, there is absolutely no contention and Petitioner had lawfully exercised his legal rights to appeal the determination rendered by such hearings. Further, it is without question that the Petitioner **was in the middle of exercising his legal rights when the Appellees came unto the Appellant's property and destroyed the buildings and their contents**. Thus there was and is no contention concerning the issues about the property and houses was on appeal at the time that the Respondents deliberately and wilfully acted and destroyed the Petitioner's two houses. [3]

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3. Respondents' counsel, in response to Petitioner's opposition to their motion to dismiss acknowledged that he was unaware that the Respondents had destroyed the houses while the case was upon appeal to the Superior Court, notwithstanding the fact that it was clearly

Thus, at the time of the acts and actions of the Appellees, Appellant was exercising his legal rights of appeal and was in the appeal process which legally foreclosed the Respondents from doing exactly what they did without the permission of the Superior Court prior to destroying the two houses.

Thus, Petitioner respectfully advances that the Respondent's legal position can be maintained under the decision of this Court in **Parratt v. Taylor**, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981), which held that the existence of an adequate post-deprivation remedy under state law precludes a § 1983 action based upon procedural due process in certain circumstances. Petitioner advances that the acts and actions of the Respondents clearly falls within this Court's judgment as rendered in **Zinermon v. Burch**, 494 U.S. 113, 132, 110 S.Ct. 975, 986-87, 108 L.Ed.2d 100 (1990), where there is a right of a constitutional violation may be raised notwithstanding the adequacy of a predeprivation remedy, under § 1983, regardless of whether a post-deprivation remedy is also available.

Likewise, Petitioner has maintained at all times that the inverse condemnation under Georgia law is not relevant for the purposes as advanced by the Respondents and thus Petitioner has clearly challenged the "established state procedure," as the plaintiff did in **Logan v. Zimmerman Brush Co.**, 455 U.S. 422, 436, 102 S.Ct. 1148, 1158, 71 L.Ed.2d 265 (1982).

"The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" **Mathews v. Eldridge**, 424 U.S. 319, 333, 96 S.Ct. 893, 902, 47 L.Ed.2d 18 (1976) (emphasis added) (citation omitted). In these circumstances, Petitioner had invoked his procedural due process objection to the Respondent's conduct by appealing the

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stated in Plaintiff's Complaint. It should also be noted that the houses set on two different pieces of property and that the Respondents went to ***two locations*** and separately destroyed the house on each location in question. The Respondents have never contended that the destruction of the two house was done inadvertently or by mistake.

judgment to the Superior Court of which the Respondents received notice by the Petitioner. See **Riggins v. Board of Regents**, 790 F.2d 707, 712 (8th Cir. 1986).

In light of the fact that Petitioner had tendered an appeal to the Superior Court, which the Respondents were aware of clearly did not provide any basis for which the Respondents knew that they were authorized to appear at the Petitioner's two properties, after the filing of the Petitioner's appeal, and bull doze each of the houses in question. Nor did the Respondents at any time prior to appearing notify the Petitioner that they would appear and would destroy each of the houses in question whatsoever so that the Petitioner could move for a restraining order from the Superior Court. See generally **Mullane v. Central Hanover Bank & Trust Co.**, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950).

Petitioner relying upon **Soldal v. Cook County**, 506 U.S. 56, 113 S.Ct. 538, 121 L.Ed.2d 450 (1992), and **Conner v. City of Santa Ana**, 897 F.2d 1487 (9th Cir.), cert. denied, 498 U.S. 816, 111 S.Ct. 59, 112 L.Ed.2d 34 (1990), advances that the Respondents violated Petitioner's Fourth Amendment rights were violated when the Respondents appeared on the separate properties and destroyed each of the houses in

Had Petitioner not filed an appeal to the Superior Court than the question of the Respondent's destruction of each of the houses in question would have been under a different light and thus Petitioner had clearly taken the "normal precautions to maintain his privacy." **Rawlings v. Kentucky**, 448 U.S. 98, 105, 100 S.Ct. 2556, 2561, 65 L.Ed.2d 633 (1980). In these circumstances, the Fourth Amendment analysis and the Due Process analysis are "similar and yield[] a like result." **G.M. Leasing Corp. v. United States**, 429 U.S. 338, 352 n. 18, 97 S.Ct. 619, 628 n. 18, 50 L.Ed.2d 530 (1977).

The Respondents acts and actions clearly falls into the conduct that "shocks the conscience," or interferes with the rights "implicit in the concept of ordered liberty." **United States v. Salerno**, 481 U.S. 739, 746, 107 S.Ct. 2095, 2101, 95 L.Ed.2d 697 (1987) (quoting Rochin v. California, 342 U.S. 165, 172, 72 S.Ct. 205, 209,

96 L.Ed. 183 (1952), and **Palko v. Connecticut**, 302 U.S. 319, 325-26, 58 S.Ct. 149, 152, 82 L.Ed. 288 (1937)) When the Supreme Court invokes substantive due process, it does so to protect a "fundamental interest" or other wise to preclude the abusive exercise of government power. See **McKinney v. Pate**, 985 F.2d 1502 (11th Cir. 1993).

The Respondents conduct clearly is shocking in that if the appeal process means nothing and the government is not required to recognize and adhere to the due process rights as invoked in and under the judicial system that the state demands of its citizens then the laws are only tools that the state utilizes for its benefit but is not held to in its conduct.

Thus, the Respondents' conduct clearly did not fall within the "careful balancing of governmental and private interests" that **Soldal** requires, 506 U.S. at 72, 113 S.Ct. at 549.

Question No. 3:

Whether the Rooker-Feldman Doctrine Invalidates Relief under Pulliam v. Allen

While the district court addressed the issue of Petitioner's claims under Pulliam v. Allen [4] it found that the acts and actions of Respondent Judge Ott, did not reach to such a level that the Pulliam dictates were invoked. The Eleventh Circuit, in its decision affirming the district court upon the Rooker-Feldman Doctrine did not address the issue whatsoever.

The district court reasoned that a party seeking injunctive relief must allege a real and immediate, as opposed to a merely conjectural or hypothetical, threat of future injury and basing its dismissal upon the decision by this Court in **City of Los Angeles v. Lyons**, 461 U.S. 95 (1983) and **Church v. City of Huntsville**, 30 F.3d 1332 (11th Cir. 1994).

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4. 466 U.S. 522 (1984).

The first question that Petitioner respectfully invokes for the Honorable Court to address would be the fact that in Pulliam, like the present case, there was no indication, once suit was filed, that the acts and actions would continue and therefore, like in Petitioner's case, would be something likely to remain entirely in the past. **Church v. City of Huntsville**, 30 F.3d 1332 (11th Cir. 1994).

Respondents have never advanced, claimed or otherwise advanced that the acts and actions by Respondent Ott, were isolated, would not occur again or that if the same or similar situation occurred that Judge Ott would not commit the same acts and actions. Nor have the Respondents ever denied any of Petitioners claims since their motions to dismiss were granted by the district court.

Petitioner would respectfully move for a clarification of the Pulliam decision as to the present case in relationship to the Rooker-Feldman Doctrine. Obviously, if logic dictates, the Rooker-Feldman Doctrine should have prevented the case from ever reaching the United States Supreme Court and the decision that the Honorable Court has as standing case law. It should be noted that the Eleventh Circuit has never found any instance in which this Court's decision in Pulliam ever survived or was found controlling.

In light of the fact that Petitioner's case before the district court never survived the Respondent's motion to dismiss, Petitioner never had a chance to show a pattern or conduct or whether or not the relief requested under Pulliam was isolated or continuing, as was done in Pulliam.

Obviously this Court's decision in Pulliam directly deals with the legal principles as advanced by this Court pursuant to the Rooker-Feldman Doctrine and therefore, Petitioner respectfully moves for the Honorable Court to further define exactly where the legal line is drawn in the legal sands for the federal judiciary to clearly use as a measuring line to see if this Court's decision in Pulliam can be invoked and where this Court's decisions pursuant to the Rooker-Feldman Doctrine trunicate and erase jurisdiction in civil rights suits pursuant to Title 42, U.S.C., Section 1983 and under Pulliam.

REASONS FOR GRANTING THE WRIT

I.

FURTHER DEFINE THE EXTENT THAT THE ROOKER-FELDMAN DOCTRINE CAN OR CANNOT BE UTILIZED IN RELATIONSHIP TO CLAIMS ARE RAISED AGAINST PUBLIC OFFICIALS TO THEIR ACTS AND ACTIONS WHICH VIOLATE CONSTITUTIONAL RIGHTS.

While the Rooker-Feldman doctrine was never raised in the district court, it was exclusively utilized by the Eleventh Circuit Court of Appeals as the sole and exclusive basis for affirming the lower court's judgment.

Since the original proceedings were quasi-criminal in nature, which do not allow counterclaims to be raised and/or compensation to be granted or awarded, this issue dealing with constitutional violations occurring in state quasi-criminal proceedings which occur and their relationship to the Rooker-Feldman doctrine and its application should be addressed by the Honorable Court for the purposes of further defining the law under the unusual circumstances of the instant case.

II.

DEFINE OR CLARIFY HOW STATUTES PASSED FOR ONE PURPOSE CAN BE UTILIZED FOR THE PURPOSES OF AVOIDING LIABILITY WHEN THE STATUTES ARE CLEARLY OUTSIDE THE SCOPE AND LIMITATIONS LEGISLATIVELY PASSED AND ENACTED BY THE STATE BUT USED TO AVOID LIABILITY UNDER THEM.

The State of Georgia enacted and passed the inverse condemnation statutes exclusively for the purposes of dealing with public works projects. Nothing in the statutory make up or the legislative intend ever addressed the purposes for which the Respondents raised and utilized Georgia's inverse condemnation

statutes and therefore, Petitioner respectfully moves for the Honorable Court to define the extent, if any, that government actors can utilize defensive protections under statutes and laws which were not designed, passed and enacted for the purposes utilized by the Respondents.

III.

FURTHER DEFINE THE LIMITATIONS OF THE PERIMETERS UNDER WHICH A PULLIAM v. ALLEN CLAIM CAN BE RAISED.

The district court found that Petitioner's claims against Respondent John M. Ott, a Superior Court Judge, could not be invoked under this Court's decision in Pulliam v. Allen.

Extrapolating the district court's legal theory, then Pulliam v. Allen could not have existed pursuant to the Rooker-Feldman doctrine and therefore it clearly appears that state judicial officials, in performing acts and actions within their judicial capacity can be held to the Court's standard as set forth in Pulliam v. Allen.

Under the facts of the case, if a judicial wilfully violates a party's constitutional rights and does it on a random basis, then there is no legal foundation to hold said judicial official accountable under the Court's rulings in Pulliam v. Allen. If random acts and actions are not actionable under Pulliam v. Allen, so as to ensure that said judicial official does not continue such acts in the future than the Honorable Court needs to redefine the extent or limitations of Pulliam v. Allen to the facts or the case at bar and other instances which Pulliam can or cannot be invoked pursuant to the protections that the Honorable Court defined in the Court's decision in that case.

CONCLUSION

The state invoked the law against the Petitioner. It prosecuted Petitioner under those laws and found against the Petitioner. Petitioner, invoking Petitioner's First, Fourth, Fifth and Fourteenth Amendment rights, appealed the decision rendered by the state to the

appellate tribunal. While the Petitioner was upon the appellate plateau, the Respondents came to the Petitioner's two properties and destroyed each of the houses in question while Petitioner's appeal was pending before the appellate tribunal. The state, after destroying the Petitioner's two houses, then entered into an agreement with the judge over Petitioner's appeal and had that judicial official dismiss Petitioner's appeal thereby denying Petitioner his First, Fifth and Fourteenth Amendment rights. Petitioner did not find out about this situation until after the appeal period had expired due to the fact that Petitioner was never informed to the dismissal or that the Respondents had entered into an agreement with the judicial official in question to dismiss Petitioner's appeal.

The issues raised by Petitioner, pursuant to Petitioner's civil rights complaint were not intertwined with the state court decision to the degree as advanced by the Eleventh Circuit Court of Appeals. The state appellate court never rendered a judgment or adjudicated any of the Petitioner's claims. The Respondents' invoking the State of Georgia's inverse condemnation statutes which were not designed, enacted or governing law to cover the situation that occurred. For the reasons stated above, this Court should grant this Petition for Certiorari, and should reverse the decisions rendered by the Eleventh Circuit Court of Appeals and the United States District Court for the Northern District of Georgia.

Respectfully submitted,

Aubrey S. Whelchel
Petitioner, In Propria Persona
1193 College Avenue
Covington, GA 30209

APPENDIX

APPENDIX A - OPINION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA DATED OCTOBER 20, 1998

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Aubrey S. Whelchel	:	
	:	
Plaintiff(s),	:	
	:	CIVIL ACTION NO.
v.	:	
	:	1:98-CV-1583-JEC
City of Covington, et al.,	:	
	:	
Defendant(s).	:	

ORDER

This case is presently before the Court on Defendant John M. Ott's ("Judge Ott"), Judge of the Superior Court of the Alcovy Judicial Circuit, Motion to dismiss [3] and Defendant City of Covington, City Council of Covington, and Jim Berry's Motion to dismiss [4]. The Court has reviewed the record and the arguments of the parties and, for the reasons set out below, concludes that both Motions to Dismiss should be **GRANTED**.

BACKGROUND

Plaintiff, Aubrey Whelchel, owns property licated at 4132 and 4134 Turner Street in Covington, Georgia. (Compl. [1] at § 1.) During the course of his ownership of the property, the city passed ordinances and codes concerning housing within the city. (*Id.* At § 2.) The city, through the Building and Zoning Department ("Department"), inspected plaintiff's houses and determined that the houses did not meet

building codes. The Department served a letter on plaintiff concerning the violations. (*Id.* at § 3.) After receiving the letter, plaintiff appeared in front of the Building and Zoning Board ("Board") and advised the Board that he was making improvements to the houses. (*Id.* at § 3.) The Board issued a building permit to allow plaintiff to commence making repairs and renovations to the property to bring the houses up to the code requirements. (*Id.* § 5.)

Jim Berry ("Berry"), a housing inspector for the Board, monitored plaintiff's repairs on the property. In April of 1996, plaintiff requested that Berry inspect the property, notifying him that plaintiff planned to paint and improve the outside of the homes to bring the houses up to code. (*Id.* at § 7.) Berry inspected the premises and issued a "Sworn Complaint of Violation of the City of Covington's Code of Ordinances" based upon section 301.1 of the city code. (*Id.* at § 10) Plaintiff alleges that the complaint failed to state with specificity the basis of the complaint to adequately enable plaintiff to tender an answer. (*Id.* at § 11.)

On April 24, 1996 and May 22, 1996, the Municipal Court of the City of Covington, Chief Judge Jerry O. Capes, heard the matter and issued an order finding that: (a) the premises and property constituted a nuisance as contemplated under Section 12-123(d) of the code and (b) Aubrey Whelchel, has failed to abate the nuisance. (*Id.* at § 12.) The matter was transferred to the City Counsil of the City of Covington ("City Council") for further consideration. (*Id.* at § 14.)

On June 3, 1996, plaintiff appeared before the City Council and challenged the accuracy of evidence offered by Berry in the court proceedings. (*Id.* at § 16.) On the same date, the city Council placed into the formal record of the proceedings that Judge Capes was to amend his order to meet the minimum requirements of the Code of Ordinances for the City of Covington of the two structures will exceed one-half of the value of the two houses when repaired to satisfy the minimum requirements of the Code of Ordinances of the City of

Covington." (*Id.* at § 18.)

On July 3, 1996, plaintiff tendered a handwritten appeal to the Superior Court of Newton County within thirty days of the judgment by the City Council. (*Id.* at § 20.) Before the Newton County Court considered the appeal, on August 28, 1996, the City of Covington entered plaintiff's property and destroyed it. (*Id.* at § 24.) Plaintiff alleges that counsel for the City Council through ex parte communications with Judge Ott moved for the Court to dismiss the appeal. (*Id.* at § 21.) The order of dismissal was entered on July 22, 1997. (*Id.* at § 22.)

Plaintiff brings this suit under 42 U.S.C. § 1983 alleging that defendants violated his constitutional rights under the First, Fifth, and Fourteenth Amendments to the United States Constitution. Plaintiff alleges four counts in his complaint. First he alleges that defendants City of Covington, City Council, and Berry did not provide him with due process guaranteed under the Fifth and Fourteenth Amendments before the City destroyed his houses. Second, plaintiff asserts that defendants City of Covington, City Council, and Berry conspired to violate his First, Fifth, and Fourteenth Amendment rights through their conspiracy to demolish his houses. Third, plaintiff contends that defendants City of Covington, City Council, and Judge Ott individually violated his first, Fifth, and Fourteenth Amendment rights by entering into ex parte communications in order to dismiss plaintiff's appeal in the Newton County Court. Finally, the plaintiff seeks injunctive relief against Defendants Judge Ott and the Superior Court of Newton County to enjoin the defendants from "the same acts and actions upon other individual litigants similarly situated." (*Id.* at Count Four.)

DISCUSSION

Defendants have raised several arguments in their motions to dismiss. The Court will address those arguments necessary to determine the motions to dismiss.

Appendix A

I. Judge Ott and the Superior Court of Newton County

A. Claims for Damages

Jude Ott claims that he is shielded from liability under 42 U.S.C. § 1983 on grounds of judicial immunity. In enacting 42 U.S.C. § 1983 Congress did not abrogate the doctrine of judical immunity. *Stump v. Sparkman* 435 U.S. 349 (1978). In *Stump*, the Supreme Court adopted a two-part test to determine whether a judge enjoys the absolute immunity of the doctrine. *Id.* At 362. First, the court must look to whether the judge dealt with the plaintiff in a judicial capacity. *Id.* Second, the court must decide if the judge acted in the "clear absence of all jurisdiction." *Id.* At 357. *See also Harris v. Deveaux*, 780 F.2d 911 (11th Cir. 1986).

To determine whether a judge's conduct constituted a judicial act, the court must focus on whether:

> (1) the precise act complained of . . . is a normal judicial function; (2) the events involved occurred in the judge's chambers; (3) the controversy centered around a case then pending before the judge; and (4) the confrontation arose directly and immediately out ofa visit to the judge in his official capacity.

Harris, 780 F.2d at 914 (citing Harper v. Merckle, 638 F.2d 848 (5th Cir. 1981)). In this case, all these factors are present. Judge Ott's pertinent conduct, dismissing plaintiff's notice of appeal, was a normal judicial function in a case pending before the judge, occurred in the judge's courtroom, and arose from dealings with the judge in his officials capacity. *Rolleston v.Eldridge*, 848 F.2d 163 (11th Cir. 1988). As such, Judge Ott's actions meet the first part of the test for judicial immunity.

The second prong of the test explores whether the judge acted in the "clear absence of all jurisdiction." The ruling by Judge Ott was in

response to a notice of appeal filed by plaintiff. The "applicability of judicial immunity does not ' depend on the determination of nice questions of jurisdiction.'" *Id.* (Quoting Williams v. Sepe, 487 F.2d 913, 914 (5th Cir. 1973). Since Judge Ott simply responded to a notice of appeal filed in his court, he did not act in the "clear absence of jurisdiction."

As Judge Ott is entitled to full judicial immunity under the two part test of *Stump v. Sparkman*, plaintiff's claims for damages against must be dismissed.

B. Claims for Injunctive Relief

The doctrine of judicial immunity does not bar a suit against a judge for injunctive relief. *Pullian v. Allen*, 466 U.S. 522, 541-42 (1984). However, a party seeking injunctive relief must allege a real and immediate, as opposed to a merely conjectural or hypothetical, threat of future injury. *City of Los Angeles v. Lyons*, 461 U.S. 95, 102-103 (1983). "[A] prospective remedy will provide no relief for an injury that is, and likely will remain, entirely in the past." *Church v. City of Huntsville*, 30 F.3d 1332, 1337 (11th Cir. 1994) (citing *Amer. Postal Workers Union v. Frank*, 968 F.2d 1373, 1376 (1st Cir. 1992)).

In this case, plaintiff alleges that he was harmed by the destruction of his houses and by Judge Ott's dismissal of his notice of appeal. Both of these event were singular occurrences that happened in the past, and, as such, plaintiff is impermissibly requesting a prospective remedy for past harm. Moreover, the harm plaintiff suffered is not of the type that is likely to be repeated against him. [1]

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1. In Church v. City of Huntsville, 30 F.3d 1332 (11th Cir. 1994), a group of homeless individuals brought suit to enjoin the city from arresting, harassing, or removing the plaintiffs from the street. Because the plaintiffs were homeless, there was a high likelihood that the city would continue to remove the plaintiffs from the street. Hence, the court found that the plaintiffs had standing to sue for an

Appendix A

Because plaintiff has not alleged a real and immediate future injury, his claim for an injunction against Judge Ott and the Superior Court of Newton County must be dismissed.

II. City of Covington, City Council of Covington and Jim Berry

A. Plaintiff's Due Process Claims

Plaitniff alleges that the defendants deprived him of due process by tendering false statements to the Municipal Court of Covington and the City Council of Covington. In addition, plaintiff alleges that defendant Berry provided inaccurate testimony and evidence to the actual condition of plaintiff's property. Assuming these allegation are true, plaintiff's claims must be dismissed.

A homeowner's procedural due process claim under 42 U.S.C. § 1983 fails if the state provides all the process that the plaintiff is due. *Boatman v. Town of Oakland*, 76 F.3d 341 (11th Cir. 1996). In *Boatman*, the court dismissed plaintiff's procedural due process claim under Section 1983 because before bring the case into federal court, the plaintiffs could have gone to the state court and gotten a writ of mandamus or an injunction. *Id.* At 346, n. 13. Because the state offered such procedures, the stated provided "all the process [the plaintiffs] were due." *Id.* at 346. *See also McKinney v. Pate*, 20 F.3d 1550, 1557 (11th Cir. 1994) ("Only when a state refuses to provide a process sufficient to remedy the procedural deprivation does a constitutional violation actionable under Section 1983 arise.")

Similarly, in this case, Georgia offers several procedural remedies to aid Plaintiff. Plaintiff could have appealed the decision of the Court and the City Council to the Georgia Court of Appeals or the Georgia Supreme Court, whichever court was appropriate.

In addition, plaintiff has a claim under state law for compensation

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injunction.

because, by destroying his houses, defendants have taken property without compensation. Further, the Georgia Constitution provides for an inverse condemnation action which would provide plaintiff with compensation for his loss. See *Bickerstaff Clay Production Co. v. Harris County, Georgia*, 89 F.3d 1481 (11th Cir. 1996). Because Georgia provides plaintiff with "all the process he is due," the Court must dismiss plaintiff's procedural due process claims.

B. Plaintiff's Fifth Amendment Takings claim

Furthermore, plaintiff's taking claim must also fail because it is not "ripe" for adjudication. The question of ripeness goes to whether the court has subject matter jurisdiction. *Greenbriar Ltd. v. City of Alabister*, 881 F.2d 1570, 1573 (11th Cir. 1989). In a takings clause case, plaintiff's claim ripen only if all state procedures for just compensation have been utilized. *Williamson County regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985). Before plaintiff can bring an action against defendants for a violation of his Fifth Amendment rights, he must avail himself of Georgia inverse condemnation procedure. See *Bickerstaff Clay Production Co. v. Harris County, Georgia*, 89 F.3d 1481 (11th Cir. 1996) and Reahard v. Lee County, Florida, 30 F.3d 1412, 1416 (11th Cir. 1994). Because plaintiff had not done so, plaintiff's case is not ripe for adjudication and, this court is without subject matter jurisdiction.

C. Claims against Berry

Plaintiff also alleges that Berry, the housing inspector, violated his constitutional rights by lying and falsifying documents to the Municipal court of Covington and the city Council. As explained above, these claims do not amount to constitutional violations for purposes of 42 U.S.C. § 1983, and plaintiff's claims against defendant Berry are dismissed.

Appendix A

D. Conspiracy to Violate Civil Rights

Finally, plaintiff alleges that the defendants entered into a conspiracy to deprive him of his civil rights. To prove a conspiracy under 42 U.S.C. § 1983, a plaintiff must prove that defendants deprived him of a right secured by the Constitution of the United States. *Adickles v. S.H. Kress & Co.*, 398 U.S. 144, 150 (1970). See also *Goldschmidt v. Patchett*, 686 F.2d 582 (7th Cir. 1982) ("Section 1983 does not, however, punish conspiracy; an actual denial of a civil right is necessary before a cause of action arises.") Because all of the alleged civil rights violations have been dismissed, plaintiff's conspiracy claim must also be dismissed.

CONCLUSION

Although the Court is sympathic to plaintiff's plight, he has not pleaded allegations to support 42 U.S.C. § 1983 claims. As the Eleventh Circuit noted: "[a] section 1983 action is neither an alternative nor a complement to the appeal of a state trial court decision to a higher state court. Federal courts 'may not decide federal issues that are raised in state court proceedings and inexorably intertwined with the state court judgment.'" *Rolleston*, 848 F2d at 165 (quoting *Wood v. Orange County*, 715 f.2d 1543, 1546 (11th Cir. 1983)). Although the dismissal of this case deprivesplaintiff of relief in federal court, this Court notes that plaintiff had, and still may have, an opportunity for relief through appeal and through compensation hearings in the state system.

For the foregoing reasons, Defendant John M. Ott's Judge of the Superior court of the Alcovy Judicial Circuit, Motion to Dismiss [3] and Defendant City of Covington, City Council of Covington, and Jim Berry's Motion to Dismiss [4] are **GRANTED**.

So ORDERED, this 20 day of October, 1998.

Signed Julie E. Carnes

JULIE E. CARNES
UNITED STATES DISTRICT JUDGE

APPENDIX B - OPINION OF THE ELEVENTH CIRCUIT COURT OF APPEALS DATED SEPTEMBER 10, 1999

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-9573
Non-Argument Calendar

D.C. Docket No. 98-01583-1-CV-JEC

AUBREY S. WHELCHEL,

Plaintiff-Appellant,

versus

CITY OF COVINGTON, GEORGIA
CITY COUNSEL OF COVINGTON, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(September 10, 1999)

Before TOJOFLAT, BLACK and HULL, Circuit Judges

PER CURIAM:

Appendix B

Appellant Aubrey Whelchel appeals the district court's dismissal of his action brought pursuant to 42 U.S.C. § 1983 alleging that Appellees City of Covington, City Counsel of Covington, building inspector James Berry, Judge John Ott, and Superior Court of Newton County violated his constitutional rights under the First, Fifth, and Fourteenth Amendments of the United States Constitution as well as his rights under the Georgia State Constitution. Based upon our review of the record, we conclude the district court did not err in dismissing Appellant's action because we lack jurisdiction to review Appellant's claims pursuant to the Rooker-Feldman doctrine.

Under the Rooker-Feldman doctrine, federal courts do not have jurisdiction over challenges to final judgments of a state court judicial proceeding even if those challenges allege that the state court's action was unconstitutional. District of Columbia Court of Appeals v. Feldman, 103 S. Ct. 1303, 1317 (1983); Rooker v. Fidelity Trust Co., 44 S. Ct. 149, 150 (1923). This doctrine applies not only to bar claims actually raised in the state court proceedings, but also bar claims that are inextricably intertwined with the state court's judgment. Powell v. Powell, 80 F.3d 464, 466-67 (11th Cir. 1996).

In this case, Appellant's claims arise out of the dismissal of his state court action wherein he challenged the right of government officers to condemn his real property. Appellant pursued his claims to the appellate level before government officers foreclosed and then demolished his real property. Instead of raising any additional claims based upon the destruction of his property, Appellant waited 11 months until his state court action was dismissed. Appellant then proceeded to federal court to raise federal constitutional claims based upon the destruction of his property. Appellant is barred, however, from raising these claims in federal court because he had a reasonable opportunity to raise them in state court and they are inextricably intertwined with the state court judgment.

AFFIRMED.

APPENDIX C - OPINION OF THE ELEVENTH CIRCUIT COURT OF APPEALS DATED OCTOBER 29, 1998

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-9573

AUBREY S. WHECHEL,

Plaintiff-Appellant,

versus

CITY OF COVINGTON, GEORGIA
CITY COUNSEL OF COVINGTON,
JIM BERRY,
JOHN M. OTT, in his official capacity,
SUPERIOR COURT OF NEWTON COUNTY,

Defendants-Appellees.

On Appeal from the United States District Court for the
Northern District of Georgia

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

Before" TJOFLAT, BLACK and HULL, Circuit Judges.

PER CURIAM:

the Petition(s) for Rehearing are DENIED and no member of this

panel nor other Judge in regular active service on the Court havir requested that the Court be polled on rehearing en banc (Rule 3 Federal Rules of Appellate Procedure; eleventh Circuit Rule 35-5), th Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

- Signed [unknown signature]
UNITED STATES CIRCUIT JUDGE